91-2005

Supreme Court, U.S.
FILED
MAR 23 1992
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE

UNITED STATES.

OCTOBER TERM 1991-1992

NO.91-1220 CA-90-1192-6-20K CA-90-1234-6-20K

ROGER LEE SIMMONS

V. PETITIONER

GENERAL ELECTRIC COMPANY METROPOLITAN LIFE INSURANCE COMPANY ELECTRIC MUTUAL INSURANCE COMPANY RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ROGER LEE SIMMONS

216 DOUGLAS DRIVE

SIMPSONVILLE, SOUTH CAROLINA 29681 (803) 963-4918

PETITIONER

QUESTIONS PRESENTED

(1)IS ERISA LAWS OF 1974,1985 AND 1986 LEGAL AND CONSTITUTIONAL?

(2)IS GENERAL ELECTRIC COMPANY METROPOLITAN LIFE INSURANCE COMPANY BENEFITS HANDBOOKS RULES LEGAL AND CONSTITUTIONAL AND DO THEY HAVE TO GO BY IT?

(3)IS IT LEGAL AND CONSTITUTIONAL FOR GENERAL ELECTRIC COMPANY TO OWNED AND CONTROL ELECTRIC MUTUAL LIABILITY INSURANCE COMPANY WHICH HANDLES WORKERS COMPENSATION FOR GENERAL ELECTRIC COMPANY TO DELAY AND REFUSE TO PAY FOR A OCCUPATIONAL DISEASE

INJURY TO ROGER LEE SIMMONS LUNGS,RESPIRATORY SYSTEM AND IMMUNE SYSTEM FROM HIS JOB AT GENERAL ELECTRIC COMPANY FROM MARCH 15,1978 THRU TILL I DIE?

(4)IS IT LEGAL AND CONSTITUTIONAL GENERAL ELECTRIC RULES ON PENSION QUALIFICATION SERVICE (PQS)THAT AFTER 1975 IN WHICH YOU WERE CREDITED WITH AT LEAST 1.000 HOURS OF SERVICE EQUALS ONE(1)YEAR OF PENSION BENEFITS OF SERVICE WITH GENERAL ELECTRIC COMPANY RETIREMENT PLAN?

(5)IS IT LEGAL AND CONSTITUTIONAL THAI A WORKER NEEDS 15.000 HOURS OF

WORK CREDIT TO EQUAL 15 YEARS OF PQS TO RETIRE ON A PERMANENTLY DISABLED PENSION AND TO RECEIVE ALL BENEFITS PLUS ALL THE EXHIBITS WHICH SHOWS WHAT IS IN DISPUTE BETWEEN ROGER LEE SIMMONS AND GENERAL ELECTRIC COMPANY, METROPOLITAN LIFE INSURANCE COMPANY, AND ELECTRIC MUTUAL LIABILITY INSURANCE COMPANY OWNED BY G.E.?

(6)THEN IF QUESTIONS (1-5) IS LEGAL AND CONSTITUTIONAL THEN WHY IS NOT ROGER LEE SIMMONS NOT ENTITLED TO ALL DISABILITY FOR ALL PERMANENTLY DISABLED WITH 15 YEARS OF PQS FOR ALL DISABILI

TY PENSION SINCE ROGER LEE SIMMONS HAS TO HIS CREDIT OF 40 HOURS WORK S,OVERTIME HOURS, VACAT ION,SICK DAYS WITH TOTA L THAT EQUALS MORE THAN 17 THOUSAND OF WORK CRE DIT FOR HOURS OF QUALIF ICATION SERVICE (PQS) PLUS GENERAL ELECTRIC COMPANY BENEFITS?

(7)IS IT LEGAL AND CONS TITUTIONAL FOR GENERAL (G.E.)TO RETURN ROGER LEE SIMMONS PENSION MON EY OF 8½ YEARS WHICH EQ UALS 15 YEARS OF(PQS) OF 17.000 HOURS OF WORK TO KEEP HIM FROM GROUP MEDICAL,HOSPITAL,DRUGS MAJOR MEDICAL INSURANCE WHICH G.E. USES METROPO

LITAN LIFE INSURANCE AND ALL OTHER G.E. BENEFITS FITS EVEN WITH ERISA LAW OF 1986 SAYS 5 YEARS GUARANTEED PENSION WHICH GENERAL ELECTRIC COMPANY GOES BY FOR ALL WORKERS SINCE 1986 EXCEPT IN ROGER LEE SIMMONS CASE OF ERISA LAWS OF 1974,1986, AND FUTURE LAWS ON EMPLOYEE BENEFITS?

(8)IS IT LEGAL AND CONSTITUTIONAL FOR U.S. MAGISTRATE WILLIAM M. CATOE JR. UNDER CANON OF LAWS TO REFUSE TO HAVE A HEARING TO BE ABLE TO CALL WITNESSES,REFUSE TO LOOK AT EXHIBITS DUE PROCESS OF LAW FAIR DAY

IN COURT NOT TO HAVE

TIES WITH RESPONDENTS AND THEIR LAWFIRMS?

(9)IS IT LEGAL AND CONSTITUTIONAL FOR U.S. MAGISTRATE WILLIAM M. CATOE JR. AND NEW FEDERAL JUDGE HENRY MICHAEL HERLONG JR. WHEN BOTH SHOULD HAVE NOT HEARED OR RULED WHEN THEY BOTH WERE IN VIOLATION OF CANNON LAWS 1,2,A,B,3A(1,3,4,5,6,7,B(1,2;3,4,C(1,(A,B,C,D,,II,III,IV,(2)(3)(A,B,C,I,II,III,IV,D CANON 5,A,B,1,2,3,C,1,23,4,A,B,C,5,6,7,D,1,2,EF,G,CANON 6,CANON 7,A,1,A,B,C,2,3,4,B,1,A,B,C2,3,CODE OF JUDICIAL CONDUCT FOR JUDGES MAG

ISTRATES AND LAWYERS TO BE FAIR AND NOT BE UNDE R SOMEONES CONTROL?
IS IT LEGAL AND CONSTIT UTIONAL TO TREAT A PERS ON WHO HAS TO BE HIS ON LAWYER PRO SE DIFFERENT AND UNFAIRLY AGAINST LA WYERSAND RESPONDENTS LI KE ROGER LEE SIMMONS IS NOBODY HIS POOR, WHITE, MALE, DISABLED FORMER BLUECOLAR WORKER, WITH A HIGH SCHOOL EDUCATION YOUNG ADULT WITH NO POW ER TO CALL IN FAVORS AN D BECAUSE IM A KING JAM ES BIBLE BAPTIST BELIEV ER WHICH THE RESPONDENT S HAVE USED EVERY, FAVOR. TRICKS, TO DELAY REFUSE TO HOLD UP ALL RETIREME

NT AND DISABILITY OWED TO PETITIONER ROGER LEE SIMMONS SINCE MAY 8,1986 FOR MEDICAL,PENSION,LIFE,HOSPITAL,DRUGS AND DISABILITY CHECKS AND WHY?

(11)IS IT LEGAL AND CONSTITUTIONAL TO ISSUE SUMMARY JUDGEMENT FOR RESPONDENTS WHEN THERE IS A DISAGREEMENT ON ISSUES,DATES,RULES,BENEFITS ON DISABILITY RETIREMENT,ETC. QUESTIONS OF LAWS,EXHIBITS AND FALSE AND HALF-TRUTHS WITH AFFIDAVITS BY RESPONDENTS IN COURT?

(12)IS IT LEGAL AND CONSTITUTIONAL FOR GENERAL ELECTRIC COMPANY,MET

ROPOLITAN LIFE INSURANC
E COMPANY AND GE OWNED
ELECTRIC MUTUAL LIABILT
Y INSURANCE COMPANY TO
HAND PICK THE FEDERAL
JUDGE SINCE THEY GOT
THIS LAWSUIT MOVED FROM
JOSEPH F.ANDERSON AND
THEN FROM JUDGE DENNIS
W. SHEDD THAT WAS THE
FEDERAL JUDGE TO HEAR
THIS LAWSUIT TO JUDGE
HANDPICKED TO JUDGE HEN
RY M. HERLONG JR.AND MA
GISTRATE WILLIAM M.CATO
E JR. WHY?

(13)IS IT LEGAL AND CON
STITUTIONAL FOR GENERAL
ELECTRIC COMPANY PAID
AND HIRED DOCTOR JOHN
W. WORSHAM M.D. FOR
NORTH HILLS WHICH DOES

MEDICAL SCREENING AND TREATMENT PUT ROGER LEE SIMMONS ON INDEFINITE MEDICAL LEAVE AND ALL GENERAL ELECTRIC COMPAN Y OFFICALS AGREEED ON STATEMENT DATE 6/17/86 BY DR. WORSHAM GENERAL ELECTRIC COMPANY OFFICA LS AND TO METROPOLITAN INSURANCE COMPANY WHICH HIRED THEIR PAID DOCTOR B. CATES ON WED. 7/2/86 AT 4PM TO CHECK ROGER LEE SIMMONS FOR EVALUAT ION AND PHYSICAL EXAMIN ATION AND ASSESSMENT AN D HIS MEDICAL EXAMINERS REPORT GROUP HEALTH CLA IMS OF 7/2/1986 REPORT HE SENT TO METROPOLITAN LIFE INSURANCE COMPANY

AND TO GENERAL ELECTRIC COMPANY THEN BY THE BEN EFITS BOOK IT SAYS A WORKER GETS HOURS WEEKS YEARS CREDIT TO GO TO THEIR PENSION QUALIFICA TION SERVICE (PQS) AND PENSION BENEFITS SERVIC E (PQS) THEN IF ERISA LAWS IS LEGAL AND THE BENEFITS BOOKS ARE LEGA L THEN WHY IS ROGER LEE SIMMONS NOT GETTING ALL HIS DISABILITY PENSION, LONGTERM DISABILITY INC OME,G.E. LIFE INSURANCE PRODUCT PURCHASE,STOCK BUYING AND SELLING LONG TERM CARE INSURANCE,MED ICAL BENEFITS PLAN,DENT AL ASSISTANCE PLAN PERS ONAL ACCIDENT INSURANCE

DEPENDENT LIFE INSURANC
E EMERGENCY AID, S&SP LI
FE AND ALL OTHER BENEFI
TS THEN WHY IS ROGER
LEE SIMMONS NOT GETTING
ANY OF HIS BENEFITS BEI
NG HELD UP BY GENERAL

ELECTRIC COMPANY METROP
OLITAN LIFE INSURANCE
COMPANY AND GE OWNED
ELECTRIC MUTUAL LIABILI
TY INSURANCE COMPANY
SINCE ALL AGREE THAT
ROGER LEE SIMMONS WILL
NEVER RETURN TO ANY WO
RK AS LONG AS HE LIVES?
(14)IS IT LEGAL AND CON
STITUTIONAL FOR GENERAL
ELECTRIC COMPANY AND
METROPOLITAN LIFE METRO
POLITAN LIFE INSURANCE
COMPANY BY SECTION 510

OF ERISA LAWS TO BREAK HIS MEDICAL DOCTORS RES TRICTIONS ON FILE AND G.E.NORTH HILLS DOCTORS AND ON FILE WITH NURSES AND G.E. BOSSES ALLSO TO PUT A WORKER LIKE ROGER LEE SIMMONS OR ANY WORKERBE PUT ON MEDICAL LEAVE BY THEIR DOCTORS WITH GE AND METROPOLITAN LIFE INSUR ANCE COMPANY JUST TO TR Y TO BEAT PERSON OUT OF PENSION,RETIREMENT,MEDI CAL,LIFE ,MONEY DISABIL ITY CHECK AND ALL OTHER RETIREMENT,AND ALL DISA BILITY BENEFITS?

(15)IS IT LEGAL FOR U.S MAGISTRATE WILLIAM M. CATOE JR. AND FEDERAL

DISTRICT JUDGE HENRY MICHAEL HERLONG JR. ORDER FILLED JANUARY 10, 1992 REFUSHING TO HEAR NEW EXHIBITS EVIDENCE CAME TO ROGER LEE SIMMONS ABOUT BOOK WITH ERISA BENEFITS I THOUGHT THAT THE COURTS ARE TO COME TO THE COMPLETE TRUTH AND JUSTICE WHY NOT ROGER LEE SIMMONS? (16)WHY WITH GENERAL ELECTRIC COMPANY,METROPOLITAN LIFE INSURANCE COMPANY BOTH AND U.S. MAGISTRATE WILLIAM M. CATOE JR. REPORT AND RECOMMENDATIONS RULED BY UNITED STATES DISTRICT JUDGE HENRY M.HERLONG JR. ORDERED FILED

SEPTEMBER 24,1991 ACCEP
TED THAT BROGER LEE SIM
MONS IS TO GET BACK TO
5/08/1986 AND PRESENT
AND FUTURE OF MONTHLY-
LONG-TERM DISABILITY CH
ECKS AND FUTURE CHECKS
OF $200.99 TILL I TURN
65 YEARS OLD TILL THE
YEAR OF 2020, AND $49
OR $50.000 DOLLARS
LIFE INSURANCE POLICY
BUT THEY REFUSE TO GIVE
TO ROGER LEE SIMMONS
WHILE WE ARE IN COURT
ABOUT MEDICAL,HOSPITAL
PENSION BENEFITS AND
OTHER LIFETIME DISABILI
TYS SO WHY NOT GIVE
WHATS AGREED UPON AND
LET ALL THE COURTS LOOK
AT OLD AND NEW EXHIBITS

AND EVIDENCE TO RULE ON ALL THE DISPUTED ERISA ACT AND LAWS OF 1974, 1986 SO WHY HAS ROGER LEE SIMMONS IS ENTITLED TO AS A LIFETIME DISABI LTY TILL HE DIES IN THE NEAR FUTURE I ASK WHY THIS HAS HAPPENED?

IN THE

SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM 1991-1992

NO. 91-1220

CA-90-1192-6-20K

CA-90-1234-6-20K

ROGER LEE SIMMONS

PETITIONER

V.

GENERAL ELECTRIC COMPAN

Y, METROPOLITAN LIFE

INSURANCE COMPANY, ELECT

RIC MUTUAL INSUURANCE

COMPANY

RESPONDENT

PETITION FOR A WRIT OF

CERTIORARI TO THE UNIT

ED STATES COURT OF APP

EALS FOR THE FOURTH

CIRCUIT THE PETITIONER

ROGER LEE SIMMONS RESPECTFULLY PRAYS THAT WRIT OF CERTIORARI TO ISSUE FOR A REVIEW THE JUDGEMENT AND OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ENTERED IN THIS PROCEEDING FILED FEBRUARY 15,1992 ON JUDGEMENT IN FIRST TIME DECEMBER 27,1991.

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CASES USED BY DISTRICT AND FOURTH COURT APPEALS TABLE AUTHORITIES

(1)THOMAS V. ARN 474 U.S. 140, 149 (1985)

(2)THE FEDERAL MAGISTRATES ACT 28 U.S.C. 636 AS AMENDED IN 1976

(3) 18 U.S.C. 636(C)(1) SECTION 636

(4)SOUTH CAROLINA CODE 42-1-540

(5)SHELLY V. KRAEMEN 334 U.S.1,13,(1948)

(6)GREAT AMERICAN FEDERAL SAVINGS AND LOAN ASSOCIATION ET AL V. NOVOTNY 442 U.S. 366 (1979)

(7)UNITED STATES MAGISTRATE 28 U.S.C. 636 (B) LOCAL RULE 19.02

(B)(2)(E)(D.S.C.)

(8)MATHEWS V. WEBER 423 U.S. 261(1976) 28 U.S.C 636(B)(1) FED. R. CIV. P 56(C)FED.R.CIV P56(E)

(9) CELOTEX V. CATRETT 477 U.S.317(1986) SUPRA AT 322-323

(10)MAGISTRATE JUDGES REPORT AND RECOMMENDATION

(11)CAMBY V. DAVIS 718F 2D 198(4TH CIR 1983)

(12)SUMMARY JUDGEMENT

(13)DE NOVO REVIEW & TIMELY OBJECTIONS

(14)ORPIANO V. JOHYNSON 687 F 2D 44,47(4TH CIR 1982)

(15)28 U.S.C.636(B)(1)(C)

(16)ERISA OR EMPLOYEE RETIREMENT INCOME SECURITY ACT 29 U.S.C. 1001 ET SEQ.88STAT 829(1974)

(17)RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS OR RICO ACT TITLE IX OF THE ORGANIZED CRIME CONTROL ACT OF 1970, 18 U.S.C. 1961-1968, 84 STAT. 941, TIT.IX(1970)

CASES BY PETITIONER USING IN COURT ON ERISA CASES RULED IN OTHER COURTS CASES AS FOLLOWS:

(1)EMPLOYEE RETIREMENT INCOME SECURITY ACT 29 U.S.C.1001 ET SEQ. 88 STAT. 829(1974) AND FROM 1001 TO 1461 ALSO SECTION 510 OF ERISA LAWS TO PROTECT ALL

LIFE,MEDICAL,PENSIONS,
RETIREMENT AND DISABILI
TY BENEFITS AND MONTHLY
CHECKS.
(2)SECTION 510 OF ERISA
LAWS JOHN R. FOLZ V.
MARRIOTT CORP. ID. 1140
594 F. SUPP. 1007(W.D.
MO. 1982)
(3)TEPER V. PARK WEST
GALLERIES INC. THE MICH
IGAN SUPREME COURT N.W.
2D (MICH.AUG. 24,1988)
(4)SECOND U.S. COURT OF
IN DISTER V. THE CONTIN
ENTAL GROUP, INC.F.2D
(2ND CIR. OCTOBER 3,
1988 NOTE THAT SECTION
510 OF ERISA MAKES IT
ILLEGAL FOR EMPLOYERS
TO DISCHARGE ANY EMPLOY
EE FOR THE PURPOSE OF

CUTTING OFF EMPLOYEE BENEFITS.

(5)MCDONNELL DOUGLAS CORP V. GREEN THE UNITE D STATES SUPREME COURT IN ITS 1973 DECISION 411 U.S. 792(1973) SEE HARTFORD COURANT OCTOB ER 4,1988 AT 1 ET SEQ

(6)COLIN V. CBS,INC. N.Y.S. 2D(NEW YORK COUN TY AUGUST 26,1988) 5 CP LR 901

(7)MORALES V. CADENA 825 F. 2D 1095(7TH CIR 1987)

(8)CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 (COBRA) AMENDED THE INTERNAL REVENUE AND LABOR LAWS PUB L. 99-272 10001 TO

-02,100 STAT. 82 222-227(1986)

(9)26 U.S.C.A. 162(K) (WEST SUPP. 1985)

(10)29 U.S.C.A. 1161-1166(WEST SUPP 1988)

(11)26 U.S.C.A. 89(WEST SUPP 1988)

(12)PUL L. NO.99-514 1151(A)100 STAT 2085 2494(1986)

JURISDICTION OF THIS COURT IS GIVEN

THE JUDGEMENT OF THE COURT OF APPEAL FOR THE FOURTH CIRCUIT WAS ENTERED ON DECEMBER 27,1991 A FINAL JUDGE MENT WAS FILED FEBRUARY 15,1992 ON A TIMELY PETITION FOR REHEARING EN BANC WAS DENIED BY

THE SAME COURT AND LEFT SEP.24,1991 JUDGEMENT AND ORDER BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA GREENVIL LE DIVISION FILED SEP. 25,1991 STAND AND THIS PETITION FOR CERTIORARI WAS FILED WITHIN 90 DAY S OF FEB.15,1992 JUDGEM ENT.THIS COURTS JURISDI CTION IS INVOKED UNDER 28 U.S.C. 1254(1)PART III. RULE 10(A)AND(C) ON OPINIONS BELOW TO REVIEW

THE OPINION OF THE COURT OF APPEALS FOR THE FOURTH CIRCUIT COURT OF THE UNITED STATES DISMISSES THE

APPEAL FROM THE JUDGE MENT OF THE DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA AT GREENVILLE.
EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 29 U.S.C. 10001 ET SEQ. 88 STAT. 829 (1974) BAND (1986) AN ACT TO PROVIDE FOR IT DEALS WITH AMONG OTHER THINGS, PROTECTION OF EMPLOYEE BENEFITS RIGHT S AMENDMENTS TO THE INTERNAL REVENUE CODE (Q.V.) RELATING TO RETIREMENT PLANS, JURISDICTION, ADMINISTR ATION, ENFORCEMENT, AND PLAN TERMINATION INSUR ANCE INCLUDING THE PEN

SION BENEFITS GUARANTY CORPORATION INCLUDING SECTION 510

STATEMENT

I AM A PRO SE COURT FILER I AM FORMER EMPLOYEE OF GENERAL ELECTRIC COMPANY I AM TOTALLY DISABLEDRULED BY SOCIAL SECURITY,MEDICARE,S.C. WORKERS COMPENSATION ALL RULED I AM TOTALLY DISABLED I AM HAVING TO FILE THIS LAWSUIT TO GET LIFE,MEDICAL HOSPITAL INSURANCE, PENSION, AND MONTHLY DISABILITY CHECK.FILED LAWSUIT IN FEDERAL DISTRICT COURT IN GREENVILLE THEN APPEALED TO RICHMOND FOURTH CIRCUIT

COURT AND FOR EN BANC REHEARING. NOW FOR A WRIT FROM THE UNITED STATES SUPREME COURT TO OVERTURN JUDGEMENT BY DISTRICT COURT THEN FINAL JUDGEMENT FILED FEB. 15,1992 ALLSO THIS IS FOURTH TRY TO FILE WRIT IN SUPREME COURT THEY ARE MARCH 13,1992, APRIL 2,1992,MAY15,1992 JUNE 8,1992

REASONS FOR GRANTING A PETITION FOR A WRIT OF CERTIORARI IS AS FOLLO WS:

(1)WHEN A UNITED STATES COURT OF APPEAL HAS REN DERED A DECISION IN CON FLICT WITH THE DECISION OF ANOTHER UNITED STATE

S COURT OF APPEALS ON THE SAME MATTER OR HAS DECIDED A FEDERAL QUEST ION IN A WAY IN CONFLIC T WITH A STATE COURT OF LAST RESORT OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COU RSE OF JUDICIAL PROCEED INGS OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF THIS COURTS POWER OF SUPERVISION.

(C)WHEN A STATE COURT OR A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTIONOF FEDERAL LAW WHICH HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT OR HAS

FEDERAL QUESTIONS IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT.

CONCLUSION

I ROGER LEE SIMMONS ASK AND PRAY FOR RELIEF THAT THE UNITED STATES SUPREME COURT OVERTURN THE JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ON NO.91-1220, CA-90-1192-6-20K & CA-90-1234-6-20K FILED FEB.15,1992 TO PROTECT ALL WORKERS PENSIONS AFTER 5 YEARS OF (PQS) GROUP MEDICAL RETIREMENT AND DISABIL ITY BENEFITS SINCE THIS LAWSUIT RULING BY YOU

WILL THE FULL MEANING OF ALL SECTIONS OF THE ERISA LAWS OF 1974,1986 AND ANY FUTURE LAWS ADDED TO THE EMPLOYEE RETIREMENT INCOME SECUR ITY ACT 29 U.S.C. 1001 ET SEQ 88 STAT. 829 (1974) AND FROM 1001 TO 1461 ALLSO SECTION 510 OF ERISA LAWS TO PROTEC T ALL LIFE,MEDICAL, PEN SIONS,RETIREMENT AND DI SABILITY BENEFITS TO EA CH AND ALL WORKERS INCL UDING ROGER LEE SIMMONS ALLSO. ALLSO CONFLICT ING DECISIONS WITH CASE S CITED IN THIS PETITIO N BY ROGER LEE SIMMONS RULED BY OTHER CIRCUIT COURTS APPEALS COURTS

AND BY SUPREME COURTS PAST RULINGS ALLSO CIT ED IN THIS PETITION AND BY A MISCARRIED OF JUSTICE BY CIRCUIT NEW FEDERAL JUDGE HENRY MICHAEL HERLONG JR. AND UNITED STATES MAGISTRAT E WILLIAM M. CATOE JR. IN THEIR REPORT AND RULINGIN THIS LAWSUIT BETWEEN ROGER LEE SIMMONS V. GENERAL ELECTRIC COMPANY METROP OLITAN LIFE INSURANCE COMPANY AND G.E. OWNED ELECTRIC MUTUAL LIABILI TY INSURANCE COMPANY WI TH ALL THEIR MISHANDING BY ALL OF THEM WITH THE DEALING WITH PETITIONER ROGER LEE SIMMONS PRO

SE SINCE MAY 8,1986 UP TILL THIS DATE JUNE 8 1992 ON ERISA LAWS FOR MEDICAL,PENSION,LIFE, HOSPITAL,DISABILITY AND I ASK AND PRAY FOR THE SUPREME COURT FOR A WRIT OF CERTIORARI TO REVIEW THE FOURTH CIRC UIT COURT OF APPEALS JUDGEMENT FILED FEB 15, 1992 AND FOR ALL ERISA MEDICAL,PENSION BENEFIT S AND ALL THE LITTLE PEOPLE LIKE ME WHICH THE COURTS SHOULD FIND THE TRUTH AND NOT ALLOW LEGAL GAMES TO BE PLAY!

Roger Lee Simmons

ROGER LEE SIMMONS
216 DOUGLAS DRIVE
SIMPSONVILLE,S.C. 29681
(803)963-4918 JUNE 8,1992

APPENDIX

(1)JUDGEMENT FILED FEB. 15,1992 IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT 2 PAGES NO.91-1220

(2)MANDATE FILED FEB. 12,1992 IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT 1 PAGE NO.91-1220

(3) MOTION FOR EXTENSIO N OF PERIOD TO FILE AN APPEAL IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA GREENVIL LE DIVISION FILED JAN. 13,1992 ORDERED ON JAN. 10,1992 CA-6:90-1234-6-20K AND CA-6:90-1192

-6-20K 1[illegible] PAGES TOTAL
(4)UNITED STATES COURT
OF APPEALS FOR THE
FOURTH CIRCUIT OPINION
DECIDED NO.91-1220
DECEMBER 27,1991 2
PAGES.TOTAL.
(5)UNITED STATES COURT
DISTRICT OF SOUTH CAR
OLINA GREENVILLE DIVIS
ION DECISION FILED SEP.
25,1991 2 PAGES TOTAL.
CA-90-1234-6-20K .
(6)UNITED STATES DISTR
ICT COURT OF SOUTH
CAROLINA GREENVILLE
DIVISION DECISION FIL
ED SEP. 25,1991
CA-90-1192-6-20K
2 PAGES TOTAL
(7)JUDGEMENT AND ORDER
ED CA-NO.-6-90-1192-20K

CA.-NO.-6-90-1234-2OK
IN THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF SOUTH CARO
LINA GREENVILLE DIVISI
GREENVILLE DIVISION
SEPTEMBER 24,1991
FILED SEPTEMBER 25,1991
30 PAGES TOTAL
(8) CA-NO. 6;90-1192-
17K &CA & CA. NO.-6-90-
1234-17K
ORDER FILED AUGUST 27,
1990 3 PAGES TOTAL
IN THE UNITED STATES
DISTRICT COURT FOR
THE DISTRICT OF
SOUTH CAROLINA
GREENVILLE DIVISION

NO.91-1220

FILED DECEMBER 27,1991

JUDGMENT

UNITED STATES COURT
OF APPEALS FOR THE
FOURTH CIRCUIT

NO.91-1220

CA-90-1192-6-20K

CA-90-1234-6-20K

ROGER LEE SIMMONS

PLAINTIFF-APPELLANT

V.

GENERAL ELECTRIC COMPA
NY METROPOLITAN LIFE
INSURANCE COMPANY
ELECTRIC MUTUAL
INSURANCE COMPANY

DEFENDANTS-APPELLEES

FILED

FEB.15,1992

ANN A. BIRCH,CLERK

COLUMBIA S.C.

NO. 91-1220

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA AT GREENVILLE

THIS CASE WAS HEARD BY THE COURT ON THE RECORD FROM THE DISTRICT COURT THE COURT DISMISSES THE APPEAL FROM THE JUDGMEN T OF THE DISTRICT COURT

JOHN M. GREACEN
CLERK

A TRUE COPY, TESTE:
JOHN M. GREACEN CLERK

BY_____ _
DEPUTY CLERK

NO. 91-1220

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED

FEBRUARY 12, 1992

NO. 91-1220

CA-90-1192-6-20K

SIMMONS V. GENERAL ELECTRIC COMPANY

MANDATE

THE JUDGMENT OF THIS COURT DATED 12/27/91 TAKES EFFECT TODAY.

JOHN M. GREACEN

CLERK

NO. 91-1220

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

FILED JAN. 13, 1992

ANN A. BIRCH, CLERK

U.S. DISTRICT COURT

ROGER SIMMONS
PLAINTIFF
VS.
GENERAL ELECTRIC COMPANY AND METROPOLITAN LIFE INSURANCE COMPANY
DEFENDANTS

CA NO 6:90-1192-20K

ORDER

ROGER SIMMONS
PLAINTIFF
VS.
GENERAL ELECTRIC

CA. NO. 6:90-1234-20K

NO.91-1220
COMPANY METROPOLITAN
LIFE INSURANCE
COMPANY AND ELECTRIC
MUTUAL INSURANCE COMPA
NY DEFENDANTS
THIS MATTER IS BEFORE
THE COURT ON THE MOTION
BY THE PLAINTIFF, ROGER
SIMMONS(SIMMONS) FOR AN
EXTENSION OF THE PERIOD
IN WHICH TO FILE AN
APPEAL. SIMMONS FILED
THESE CONSOLIDATED CASE
S UNDER ERISA. THE
DEFENDANTS FILED MOTION
S FOR SUMMARY JUDGMENT
MAGISTRATE JUDGE CATOE
RECOMMENDED THE MOTIONS
BE GRANTED BY ORDER
DATED SEPTEMBER 24,1991

NO.91-1220
THIS COURT ADOPTED THE REPORT AND RECOMMENDAT ION AND GRANTED THE MOTIONS FOR SUMMARY JUDGMENT ON OCTOBER 2,1991, SIMMONS FILED A NEW TRIAL ON OCTOBER 4, 1991 SIMMONS FILED A NO TICE OF APPEAL BECAUSE THE NOTICE OF APPEAL WAS FILED WHILE THE NEW TRIAL MOTION WAS PENDING UNDER FEDERAL RULES OF APPELLATE PROCEDURE 4(A)(4) THE NOTICE HAD NO EFFECT ON OCTOBER 24,1991 THIS COURT ENTERED AN ORDER DENYING THE MOTION FOR A NEW TRIAL THE TIME

NO.91-1220
TO FILE A NOTICE OF
APPEAL BEGAN TO RUN ON
OCTOBER 25,1991 AND
EXPIRED NOVEMBER 25,
1991ON DECEMBER 6,1991
SIMMONS FILED A MOTION
FOR AN EXTENSION OF TIM
E TO APPEAL UNDER FEDER
AL RULE OF APPELLATE
PROCEDURE 4(A)(5) A
TIMELY MOTION FOR
EXTENSION OF TIME TO
APPEAL MUST BE MADE
WITHIN THIRTY (30)DAYS
OF THE EXPIRATION OF
THE APPEAL PERIOD.SINCE
SIMMONS FILED THIS MOTI
ON LESS THAN THIRTY DAY
S AFTER NOVEMBER 25,
1991 IT IS TIMELY AND
THIS COURT HAS JURIS

NO.91-1220

DICTION OVER THE MOTION, A MOTION FOR EXTENSION OF TIME TO APPEAL MAY BE GRANTED UPON THE SHOWING OF EXCUSABLE NEGLECT OR GOOD CAUSE FED.R.APP.P.4(A)(5) THE GOOD CAUSE STAND ARD DOES NOT APPLY TO THIS CASE BECAUSE IT ONLY APPLIES WHEN THE MOTION IS MADE BEFORE THE TIME TO APPEAL HAS EXPIRED.9 MOORES FEDERAL PRACTICE 204.13 1.-1 (1990)THEREFORE THE MOTION MAY BE GRANTED IF THE COURT FINDS EXCUSABLE NEGLECT.

NO.91-1220

EXCUSABLE NEGLECT SHOULD BE STRICTLY INTERPRETED AND WITH THE EXCEPTION OF EXTRAORDINARY CASES FEW CASES WILL QUALITY UNDER THE EXCUSABLE NEGLECT RULE 9 MOORES FEDERAL PRACTICE 204.13 1.-3(1990)THE BURDEN OF EXTABLISHING EXCUSABLE NEGLECT IS UPON AN APPELLANT EVEN ONE PROCEEDING PRO SE CRAIG V. GARRISON 549 F.2D 306,307(4TH CIR 1977)THE FOURTH CIRCUIT DETERMINED THAT IT LACKED JURISDICTION BECAUSE THE NOTICE OF APPEAL HAD NO EFFECT

NO.91-1220

IN AN UNPUBLISHED OPION DECIDED DECEMBER 27,199 1 SIMMONS ASSERTS THREE BASIC REASON WHY HIS FAILURE TO TIMELY NOTIC E HIS APPEAL WAS EXCUSA BLE NEGLECT.FIRST HE STATES THAT HE IS NOT AN ATTORNEY.IT IS TRUE THAT A PRO SE PLAINTIFF IS NOT HELD TO THE SAME STANDARDS ES A MEMBER OF THE BAR.CRAIG V. GARRISON 549 F 2D 306 (4TH CIR 1977).HOWEVER THE RIGHT OF SELF RESPRESENTATION DOES NOT EXEMPT A PARTY FROM COMPLIANCE WITH TH E RELEVANT RULES OF PROCEDURE.BIRL V.

ESTELLE 600f.2D592(5TH) CIR.1981)(CITING FARETTA V. CALIFORNIA 422 U.S 806,834 N. 46(1975).IN THIS CASE SIMMONS HAS DEMONSTRATED A KNOWLEDGE OF PROCEDURAL MATTERS BY FILING TIMELY MOTIONS AND CONDUCTING DISCOVERY.HE HAS AL.SO HAD THE SERVICES OF THREE ATTORNEYS AT TIMES IN THE COURSE OF THESE ACTIONS AND A RELATED WORKERS COMPENSATION CLAIM. UNDER VERY SIMILAR FACTS THE FIFTH CIRCUIT STATED THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN PERMITTING A PARTY TO INVOKE PRO SE

NO.91-1220

STATUS AS A DEFENSIVE SHIELD INSULATING HIM FROM THE RESULT OF HIS OWN NEGLECT PELLEGRINO V. MARATHON BANK 640 F. 2D 696,699 (5TH CIR 1981).SECOND HE CONTEN DS THAT HE WAS MISTAKEN IN BELIEVING HE COULD FILE A NEW TRIAL MOTION AND THE NOTICE OF APPEA L AT THE SAME TIME.MERE IGNORANCE OF THE LAW OR OF THE RULES IS NOT CONSIDERED TO BE EXCUS SABLE. 9 MOORES FEDERAL PRACTICE 204.13 1.-3(19 90).SEE ALSO UNITED STA TES V. DOUGLAS 874 F.2D 1145,1163 N.31 (7TH CIR.1989)(FAILLURE TO

UNDERSTAND AND COMPLY WITH THE RULES GOVERNIN G APPEALS TO A CIRCUIT COURT WILL VIRTUALLY NEVER QUALIFY A EXCUS ABLE NEGLECT). THIRD, HE ASSERTS THAT THE DISTRICT COURT AND THE CLERK OF COURT DID NOT TELL HIM THAT HE WAS MISTAKEN.THE COURT IS NOT REQUIRED TO AND SHOULD NOT ACT AS AN ADVOCATE FOR A PRO SE LITIGANT. SEE GORDON V. LEEKE,574 F.2D 1147,115 3 (4TH CIR. 1978) SIMMONS HAS FAILED TO MEET HIS BURDEN OF SHOWING EXCUSABLE

NO. 91-1220

NEGLECT, IT IS THEREFO RE, ORDERED THAT THE MOTION FOR AN EXTENSION OF THE TIME TO APPEAL IS HEREBY DENIED. IT IS ORDERED.

_____

HENRY M. HERLONG JR.
UNITED STATES
DISTRICT JUDGE
GREENVILLE, SOUTH
CAROLINA
JANUARY 10, 1992

NO.91-1220

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

ROGER LEE SIMMONS

PETITIONER-PLAINTIFF APPELLANT

V.

GENERAL ELECTRIC COMPAN Y METROPOLITAN LIFE INSURANCE COMPANY

ELECTRIC MUTUAL INSURANCE COMPANY

RESPONDANT-DEFENDANTS APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA AT GREENVILLE.

HENRY MICHAEL HERLONG JR. DISTRICT JUDGE

NO.91-1220
(CA-90-1192-6-20K &
CA-90-1234-6-20K)
SUBMITTED:DECEMBER5,199|
DECIDED:DECEMBER27,1991
BEFORE RUSSELL,MURNAG
HAN,AND NIEMEYER,
CIRCUIT JUDGES.
THE FOURTH CIRCUIT
DETERMINED THAT IT LACK
ED JURISDICTION BECAUSE
THE NOTICE OF APPEAL HA
D NO EFFECT IN AN UNPUB
LISHED OPINION DECIDED.
DECEMBER 27,1991.

NO.91-1220

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA GREENVILLE DIVISION

FILED SEPT.25,1991

ANN A. BIRCH,CLERK

U.S.DISTRICT COURT

JUDGMENT IN A CIVIL CASE ENTERED 9-25-91

CASE NUMBER:

C/A 6:90-1234-20K

ROGER SIMMONS

PLAINTIFF

V.

GENERAL ELECTRIC COMPANY METROPOLITAN LIFE INSURANCE COMPANY AND ELECTRIC MUTUAL INSURANCE DEFENDANTS

[X] DECISION BY COURT

THIS ACTION CAME TO

NO.91-1220
HEARING BEFORE THE
COURT.THE ISSUES HAVING
BEEN HEARD AND THE COUR
T HAVING GRANTED
DEFENDANTS MOTION OF
SUMMARY JUDGMENT IT IS
ORDERED AND ADJUDGED
THAT SUMMARY JUDGMENT
IS HEREBY ENTERED ON
BEHALF OF THE DEFENDAN
TS,GENERAL ELECTRIC CO
MPANY METROPOLITAN INS
URANCE COMPANY AND ELE
CTRIC MUTUAL INSURANCE
SEPTEMBER 25,1991
DATE
ANN A. BIRCH, CLERK
CLERK
KATHY TISDALE
(BY) DEPUTY CLERK

NO. 91-1220

UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA GREENVILLE DIVISION

JUDGMENT IN A CIVIL CASE

ROGER SIMMONS

PLAINTIFF

V.

GENERAL ELECTRIC COMPANY AND METROPOLITAN LIFE INSURANCE COMPANY

DEFENDANTS

CASE NUMBER:

C/A 6:90-1192-20K

FILED SEPT. 25, 1991

ENTERED 9-25-91

[XX] DECISION BY COURT

THIS ACTION CAME TO

NO.91-1220
HEARING BEFORE THE
COURT.THE ISSUES HAVING
BEEN HEARD AND THE
COURT HAVING GRANTED
DEFENDANTS MOTION FOR
SUMMARY JUDGMENT IT IS
ORDERED AND ADJUDGED
THAT SUMMARY JUDGMENT
IS ENTERED ON BEHALF
OF THE DEFENDANTS.
GENERAL ELECTRIC
COMPANY AND
METROPOLITAN LIFE
INSURANCE COMPANY
SEPTEMBER 25,1991
DATE
ANN A. BIRCH, CLERK
KATHY TISDALE
(BY) DEPUTY CLERK

NO.91-1220

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA GREENVILLE

FILED

SEPT.25,1991

ANN A. BIRCH CLERK

U.S. DISTRICT COURT

ROGER SIMMONS

PLAINTIFF

VS.

GENERAL ELECTRIC COMPAN Y AND METROPOLITAN LIFE INSURANCE COMPANY

DEFENDANTS

C.A.NO.6:90-1192-20K

ROGER SIMMONS

PLAINTIFF ORDER

VS.

GENERAL ELECRRIC COMPAN Y METROPOLITAN LIFE

NO.91-1220

INSURANCE COMPANY AND ELECTRIC MUTUAL INSURAN CE DEFENDANTS

C.A.NO.6:90-1234-20K

THIS MATTER IS BEFORE THE COURT WITH THE REPO RT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE MADE IN ACCORDANCE WITH 28 U.S.C. § 636(B) AND LOCAL RULE 19.02(B)(2)(E)(D.S C.) THE RECOMMENDATION HAS NO PRESUMPTIVE WEIG HT, AND THE RESPONSIBIL ITY TO MAKE A FINAL DETERMINATION REMAINS WITH THE UNITED STATES DISTRICT COURT. MATHEWS V. WEBER 423 U.S.261

NO.91-1220

(1976) THE COURT IS CHARGED WITH MAKING A DE NOVO DETERMINATION OF THOSE PORTIONS OF THE REPORT AND RECOMME NDATION TO WHICH SPECIF IC OBJECTION IS MADE THE COURT MAYACCEPT REJECT OR MODIFY, IN WHOLE OR IN PART THE RECOMMENDATION MADE BY THE MAGISTRATE JUDGE OR RECOMMIT THE MATTERS TO HIM WITH INSTRUCTIONS 28 U.S.C. § 636(B)(1)

THIS CASE BEGAN ON OCTOBER 31,1987,WHEN THE PLAINTIFF FILEDF A WORKERS COM,PENSATION CLAIM AGAINST HIS EMPLOYER GENERAL

NO.91-1220
ELECTRIC COMPANY
(GENERAL ELECTRIC)
DEFENDANT ELECTRIC
INSURANCE (ELECTRIC
MUTUAL) WAS ALSO A
PARTY TO THE CASE AS
THE WORKERS COMPENSATIO
N CARRIER FOR GENERAL
ELECTRIC. THE PLAINTIFF
ALLEGED IN HIS CLAIM
THAT HIS EXPOSURE TO
CHEMICALS WHILE WORKING
FOR GENERAL ELECTRIC HA
D RESULTED IN AN OCCUPA
TIONAL DISEASE/ACCIDENT
AL INJURY. ALTHOUGH THE
PLAINTIFFS ORGINAL
CLAIM WAS DENIED BY A
SINGLE COMMISSIONER OF
OF THE SOUTH CAROLINA

NO.91-1220

WORKERS COMPENSATION COMMISSION,THAT DECIS ION WAS OVERTURNED ON APPEAL TO THE FULL COMMISSION THAT DECISI ON WAS UPHELD ON APPEAL TO THE COURT OF COMMON PLEAS OF GREENVILLE COUNTY BY THE HONORABLE FRANK P. MCGOWAN JR. ALTHOUGH GENERAL ELECTR IC AND ELECTRIC MUTUAL APPEALED THIS DECISION TO THE SOUTH CAROLINA SUPREME COURT.THE APPEAL WAS WITHDRAWN BEFORE A DECISION WAS ISSUED.WHILE THE PLAIN TIFFS CASE WAS PENDING BEFORE THE SOUTH CAROL

NO.91-1220

INA SUPREME COURT.HE FILED THESE TWO CASES IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CARO LINA.THE TWO CASES WERE CONSOLIDATED BY ORDER OF THE HONORABLE WILLIA M M. CATOE JR. U.S. MAGISTRATE JUDGE FILED JULY 19,1990. IN THIS FIRST CASE CIVIL ACTION NO.6:1192-20K PLAINTIFF CLAIMED THAT GENERAL ELECTRIC HAD DENIED BENEFITS TO HIM AND WAS VIOLATING THE EMPLOYEE RETIREMENT INCOME SECUR ITY ACT OF 1974(ERISA) 29 U.S.C. § 1001 ET SEQ IN THE SECOND ACTION

NO. 91-1220

6:90-1234-20K HE BROUGHT SUIT AGAINST GENERAL ELECTRIC, ELECTRIC MUTUAL AND METROPOLITAN LIFE INSURANCE COMPANY ALLEGING THAT THEY HAD CONSPIRED TO DENY HIM BENEFITS ALLEGING THAT THEY HAD SUBMITTED HIM TO A INTENSIVE SURVEILLANCE CAMPAIGN TO HARASS HIM ALLEGING THAT THE DEFENDANTS WERE GUILTY UNDER THE CRIMINAL RICO STATUTE 18 U.S.C. § 1962 AND ALLEGING THAT THE DEFENDANTS HAD DEPRIVED HIM OF HIS CIVIL RIGHTS ALL OF THE DEFENDANTS FILED MOTION S FOR

NO.91-1220

SUMMARY JUDGMENT ALLEGI NG EITHER AN ABSENCE OF JURISDICTION BY THIS COURT OR IN THE ALTERNA TIVE ALLEGING THAT THE PLAINTIFF HAD FAILED TO STATE A CAUSE OF ACTION A MOTION FOR SUMMARY JUDGMENT MAY BE GRANTED ONLY WHEN THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT FED.R.CIV P.56(C). THE MOVING PAR TY BEARS THE BURDEN OF SHOWING THE COURT WHY SUMMARY JUDGMENT IS APPROPRIATE AFTER THE MOVING PARTY MEETS THIS INITIAL RESPONSIBILITY HOWEVER THE NON-MOVING PARTY MUST RESPOND TO

NO.91-1220

INFORM THE COURT OF "SPECIFIC FACTS SHOWING THAT THERE IS A GENUIE ISSUE FOR TRIAL" AND MAY NOT REST ON THE MERE ASSERTIONS CONTAINED IN THE PLEADINGS FED.R.CIV P.56(E) AND CELOTEX V. CATRETT 477U.S. 317(1986) THE PLAIN LANGUAGE OF RULE 56(C) MANDATES THE ENTRY OF SUMMARY JUDGMENT AFTER ADEQUATE TIME FOR DISCOVERY AND UPON MOTION AGAINST A PARTY WHO FAILS TO MAKE A PARTY WHO FAILS TO MAKE A SHOWING SUFFICIENT TO ESTABLISH THE EXISTENCE OF AN ELEMENT OF THAT PARTYS CASE AND ON

WHICH THAT PARTY WILL BEAR THE BURDEN OF PROO F AT TRIAL IN SUCH A SITUATION THERE CAN BE NO GENUINE ISSUE OF MAT ERIAL FACTS SINCE A COM PLETE FAILURE OF PROOF CONCERNING AN ESSENTIAL ELEMENT OF THE NON-MOVI NG PARTYS CASE NECESSAR ILY RENDERS ALL OTHER FACTS IMMATERIAL.THE MOVING PARTY IS ENTITLE D TO JUDGMENT AS A MATTER OF LAW BECAUSE THE NON-MOVING PARTY HAS FAILED TO MAKE SINCE THE TIME OF FILING THESE TWO CIVIL ACTIONS IN THE UNITED STATES DISTRICT COURT

NO.91-1220

THE PLAINTIFF HAS FILED TWO ADDITIONAL ACTIONS IN THE DISTRICT COURT CIVIL ACTION NO.S 6:90-3066-2OK AND 6:91-1356-2OK IN ADDITION HE HAS FILED ANOTHER ACTION IN THE SOUTH CAROLINA COUR T OF COMMON PLEAS WHICH HAS BEEN REMANDED TO THE SOUTH CAROLINA WORK ERS COMPENSATION COMMIS SION BY AN ORDER DATED JUNE 6,1991 (SEE MEMORA NDUM BY ELECTRIC MUTUAL IN OPPOSITION TO THE PLAINTIFFS OBJECTIONS PAGE FOUR).

A SUFFICIENT SHOWING ON AN ESSENTIAL ELEMENT OF

NO.91-1220
HIS CASE WITH RESPECT
TO WHICH HE HAS THE
BURDEN OF PROOF CELOTEX
SUPRA AT 322-323 WHERE
A PARTY OBJECTS TO A
MAGISTRATE JUDGES REPOR
T AND RECOMMENDATION
THE PARTY IS REQUIRED
TO PROVIDE SPECIFIC REA
SON WHY THE REPORT IS
EITHER INCORRECT OR WHY
IT SHOULD NOT BE ADOPT
ED BY THE COURT VAGUE
OR GENERAL ASSERTIONS
THAT THE REPORT IS
WRONG EITHER FACTUALLY
OR LEAGALLY ARE NOT
SUFFICIENT SECTION 636
(B)(1) PROVIDES IN
PART: cc WITHIN TEN DAYS
AFTER BEING SERVED WITH

NO.91-1220

A COPY [OF A MAGISTRATE JUDGES RECOMMENDATION] ANY PARTY MAY SERVE AND FILE WRITTEN OBJECTIONS TO SUCH PROPOSED FINDINGS AND RECOMMENDATIONS AS PROVIDED BY RULES OF COURT. A JUDGE OF THE COURT SHALL MAKE A DE NOVO DETERMINATION OF THOSE PORTIONS OF THE REPORT TO WHICH OBJECTION IS MADE" (EMPHASIS ADDED). THE CLEAR LANGUAGE OF THISSECTION REVEALS THAT THE COURT IS REQUIRED TO REVIEW ONLY THOSE MATTERS TO WHICH AN OBJECTION IS MADE OR IF NO OBJECTIONS ARE FILED THE COURT

NO.91-1220
MAY SIMPLY ADOPT THE
MAGISTRATE JUDGES REPOR
T AND RECOMMENDATION
CAMBY V. DAVIS 718F2D
198(4TH CIR.1983).A LIT
IGANT MAY FORFEIT THE
RIGHT TO DE NOVO REVIEW
IF HE FAILS TO FILE
TIMELY OBJECTIONS ORPIA
NO V. JOHYNSON 687F2D
44,47(4TH CIR.1982)
WHERE THE OBJECTIONS
ARE TO LEGAL ISSUES NOT
FACTUAL ONES (ID) OR
WHERE THE OBJECTIONS
ARE GENERAL OR CONCLUSO
RY AND DO NOT RELATE TO
A SPECIFIC ERROR IN THE
REPORT AND RECOMMENDATI
ON THE STATUTE [28 U.S.
C. § 636(B)(1)(C)] DOES

NO. 91-1220

NOT ON ITS FACE REQUIRE ANY REVIEW AT ALL BY EITHER THE DISTRICT COURT OR THE COURT OF APPEALS OF ANY ISSUE THAT IS NOT THE SUBJECT OF AN OBJECTION. THOMAS V. ARN 474 U.S.140,149 (1985) THE RATIONALE UNDERLYING THIS REQUIRE MENT WAS TO SHIFT SOME OF THE COURTS WORKLOAD FROM THE DISTRICT COURT JUDGES TO THE MAGISTRAT E JUDGES A LITIGANT WHO OBJECTS ONLY IN VAGUE OR GENERAL TERMS TO THE MAGISTRATE JUDGES RECOM MENDATION FORCES THE DI STRICT COURT JUDGE TO FULLY REVIEW THE ENTIRE

NO.91-1220
CASE,FRUSTRATING THE
PURPOSES OF THE FEDERAL
MAGISTRATES ACT 28 U.S.
C. § 636, AS AMENDED IN
1976. THE PLAINTIFFS OB.
JECTIONS TO THE MAGISTR
ATE JUDGES REPORT LIST
31 OBJECTIONS TO THE
REPORT WITHOUT EXCEPTIO
N THE PLAINTIFF HAS
FAILED TO PROVIDE ANY
SPECIFIC INFORMATION AS
TO WHY THE MAGISTRATE
JUDGES REPORT AND RECOM
MENDATION IS INCORRECT
IN ITS FINAL ANALYSIS
OF THE REASONS WHY THE
DEFENDANTS SHOULD BE
GRANTED SUMMARY JUDGE
MENT.ALL OF THE ALLEGA
TIONS IN THE PLAINTIFFS

NO. 91-1220
OBJECTIONS TO THE MAGIS
TRATE JUDGES REPORT
DEAL WITH VAGUE GENERAL
CLAIMS THAT THE MAGISTR
ATE JUDGES REPORT IS IN
CORRECT OR THAT THE EVI
DENCE IS CONTRARY TO
THE REPORT. BY CONTRAST
THE MOTIONS FOR SUMMARY
JUDGMENT AND THE PLEADI
NGS IN OPPOSITION TO
THE PLAINTIFFS OBJECTIO
NS TO THE MAGISTRATE
JUDGES REPORT AND RECOM
MENDATION ALL PROVIDE
SPECIFIC INFORMATION
ABOUT THE EMPLOYEE
BENEFIT PLANS WHICH ARE
AT ISSUE IN THESE ACTIO
NS AND PROVIDE THE SPEC
IFIC LEAGAL BASIS FOR

THEIR ARGUMENTS.SEVERAL OF THE PLAINTIFFS OBJECTIONS TO THE MAGISTRATE JUDGES REPORT AND RECOMMENDATION PERTAIN TO HIS CLAIM THAT HE NEVER CONSENTED TO PROCEED BEFORE A MAGISTRATE JUDGE PURSUANT TO 18 U.S.C. § 636(C)(1) SEE PLAINTIFFS OBJECTIONS 1,28 AND 31. SECTION 636 AND THE LOCAL RULES ALLOW REFERENCE TO A MAGISTRATE JUDGE WITHOUT CONSENT FOR NONDISPOSITIVE MATTERS.ADDITIONAL OBJECTIONS BY THE PLAINTIFF PERTAIN TO HIS GENERAL CLAIM THAT THE EVIDENCE IN THE CASE DICTATES A

RESULT CONTRARY TO THAT REACHED BY THE MAGISTRATE JUDGE IN HIS REPORT AND RECOMMENDATION. SEE OBJECTIONS 3, 22A[2] 25A 30, AND 31. THE PLAINTIFF HAS FAILED [2]THE PLAINTIFF MISNUMBERED SEVERAL OF HIS OBJECTIONS RESULTING IN TWO OBJECTIONS NUMBERED 22 AND TWO OBJECTIONS NUMBERED 25. TO PROVIDE ANY SPECIFIC INFORMATION SHOWING THAT THE FACTS RECITED IN THE REPORT ARE INCORRECT. THE PLAINTIFF HAS FUTHER ARGUED THAT HE IS DISABLED AND, THEREFORE IS ENTITLED TO DISABILITY BENEFITS. FOR

NO.91-1220
EXAMPLE IN OBJECTIONS
2 AND 20 HE ALLEGES
THAT DR. WORSHAM HAS
NEVER RELEASED HIM TO
WORK.OBJECTION 21 STATE
S THAT DR. B.R.CATES HA
S FOUND THE PLAINTIFF
TO BE TOTALLY AND PERMA
NENTLY DISABLED. OBJECT
ION 22 ARGUES THAT THE
SOCIAL SECURITY ADMINIS
TRATION AND MEDICARE
HAVE FOUND THE PLAINTIF
F TO BE TOTALLY AND PER
MANENTLY DISABLED THESE
ASSERTIONS HOWEVER ARE
NOT IN DISPUTE. MAGISTR
ATE JUDGE CATOE INDICAT
ED IN HIS REPORT AND
RECOMMENDATION THAT THE
PLAINTIFF HAS BEEN FOUN
D TO BE ENTITLED TO

WEEKLY SICKNESS AND ACCIDENT BENEFITS AND THEREAFTER TO LONG-TERM DISABILITY UNDER THE GENERAL ELECTRIC EMPLOY EE BENEFITS PLAN WHICH IS ADMINISTERED BY METR OPOLITAN LIFE. (SEE MAG ISTRATE JUDGES REPORT AND RECOMMENDATION, PAGE S 7 THROUGH 8).AS THE MAGISTRATE JUDGE FOUND NO GENUINE ISSUE OF MAT ERIAL FACT EXISTS IN TH IS REGARD THE PLAINTIFF HAS ALSO OBJECTED TO NE ARLY EVERYTHING STATED BY THE MAGISTRATE JUDGE IN THE REPORT AND RECOM MENDATION INCLUDING EVE RY FACTUAL, LEGAL, AND

NO.91-1220

PROCEDURAL DECISION MAD
E BY MAGISTRATE JUDGE
CATOE. SEE OBJECTIONS
4 THROUGH 8,23,26,AND
29. A GREAT NUMBER OF
THE PLAINTIFFS OBJECTIO
NS RELATED TO HIS CONTE
NTION THAT SPECIFIC BEN
EFITS UNDER GENERAL ELE
CTRICS EMPLOYEE BENEFIT
S PLAN WERE INCORRECTLY
CALCULATED OR WERE DISA
LLOWED BY THE PLAN ADMI
NISTRATOR.SEE OBJECTION
S 9 THROUGH 16. DESPITE
THESE CONTENTIONS HOWEV
ER,THE PLAINTIFF HAS NO
T PROVIDED ANY SPECIFIC
INFORMATION WHY HE SHOU
LD BE ENTITLED TO BENEF
ITS DIFFERENT FROM THOS

E CALCULATED BY THE DEFENDANTS.THE PLAINTIF F HAS ALSO ALLEGED THAT THE MAGISTRATE JUDGE IN CORRECTLY STATED THE FACTS CONCERNING HIS WORKERS COMPENSATION CLAIM AND THE CASES WHI CH WERE HEARD BY THE SOUTH CAROLINA SUPREME COURT AND IN THE COURT OF COMMON PLEAS.ALL THE PARTIES CONCERNED IN TH IS AGREE THAT THOSE CAS ES WERE RESOLVED FAVORA BLY TO THE PLAINTIFF.TH E MAGISTRATE JUDGE ACTU ALLY MADE NO FINDINGS AS TO ANY OF THE SPECIF IC WORKERS COMPENSATION CASES PENDING BEFORE

THE SOUTH CAROLINA COUR
TS BUT NOTED ONLY THAT
THE SOUTH CAROLINA WORK
ERS COMPENSATION ACT PR
OVIDES AN EXCLUSIVE REM
EDY FOR ANY ALL ACTIONS
BY AN EMPLOYEE FOR WORK
RELATED INJURIES THEREF
ORE THE FEDERAL COURT
DOES NOT HAVE JURISDICT
ION OF THOSE CLAIMS.SEE
SOUTH CAROLINA CODE § 42
-1-540 THE MAGISTRATE
JUDGE DID NOT MAKE ANY
FINDING ABOUT THE FACTS
RELATING TO THE SOUTH
CAROLINA CASES, IN ANY
EVENT, THE PLAINTIFF HAS
SHOWN NO PREJUDICE FROM
THE ALLEGEDLY WRONG INF
ORMATION USED BY THE MA

NO.91-1220

GISTRATE JUDGE IN HIS REPORT.IN OBJECTIONS 24 AND 25,THE PLAINTIFF HAS ASSERTED THAT THE MAGISTRATE JUDGE ERRED IN HIS FINDING THAT THE PLAINTIFF HAD NOT STATED A CLAIM AGAINST THE DEFENDANTS UNDER THE RICO STATUE.AS THE DEFENDANTS HAVE POINTED OUT IN THEIR MEMORANDA IN OPPOSITION THE PLAINTIFF HAS HAD AMPLE OPPORTUNITY TO PROVIDE THE SPECIFIC INFORMATION WHICH IS NECESSARY TO ALLEGE A CAUSE OF ACTION UNDER RICO BUT HAS FAILED TO DO SO.ACCORDINGLY,THE MAGISTRATE JUDGE CORREC

TLY RECOMMENDED SUMMARY JUDGMENT ON THOSE CLAIM S.IN OBJECTION 27,THE PLAINTIFF HAS ASSERTED THAT HIS RIGHT TO DUE PROCESS WAS VIOLATED AN D THE MAGISTRATE JUDGE ERRED IN NOT FINDING A VIOLATION EVEN ASSUMING THE PLAINTIFF COULD SHOW THAT THE DEFENDANT S DID NOT AFFORD HIM SOME DEGREE OF DUE PROC ESS HE HAS NOT STATED A CAUSE OF ACTION.A PERSO NS CONSTITUTIONAL RIGHT S ARE GUARANTEED AGAINS T VIOLATION BY THE FEDE RAL OR STATE GOVERNMENT THROUGH THE FOURTEENTH

NO.91-1220

AMENDMENT DUE PROCESS CLAUSE BUT A VIOLATION BY PRIVATE PARTIES IS NOT ACTIONABLE THE SUPREME COURT HAS NOTED THAT THE FOURTEENTH AMENDMENT ERECTS NO SHI ELD AGAINST MERELY PRIV ATE CONDUCT.HOWEVER DISCRIMINATORY OR WRONG FULL SHELLEY V. KRAEMER 334 U.S. 1,13,(1948).IN SHORT,THERE CAN BE NO CLAIM OF.A CONSTITUTION AL VIOLATION BASED ON THE FOURTEENTH AMENDMEN T (OR UNDER § 1983) IF THE STATE IS UNINVOLVED IN THE ALLEGEDLY WRONGF UL CONDUCT,GREAT AMERIC AN FEDERAL SAVINGS AND

NO.91-1220

LOAN ASSOCIATION ET AL V. NOVOTNY 442 U.S.366 (1979).THIS COURT IS WITHOUT JURISDICTION TO HEAR PLAINTIFFS DUE PROCESS CAUSE OF ACTION WHERE THE ALLEGED VIOLA ION WAS COMMITTED BY A PRIVATE THIRD PARTY UNR ELATED TO THE STATE AS INDICATED REPEATEDLY AB OVE THE PLAINTIFF HAS ASSERTED OBJECTIONS TO THE MAGISTRATE JUDGES REPORT AND RECOMMENDATI ON BUT HAS FAILED TO PR OVIDE ANY SPECIFIC INFO RMATION TO CONTRADICT THOSE FINDINGS.AS THE UNITED STATES SUPREME COURT STATED IN CELOTEX

NO. 91-1220

V. CATRETT SUPRA THE NONMOVING PARTY MAY NOT REST ON THE MERE ASSERT IONS CONTAINED IN HIS PLEAD INGS BUT MUST PRE SENT "SPECIFIC FACTS SH OWING THAT THERE IS A GENUINEISSUE FOR TRIAL"

THE MERE CONTENTION THAT THE MAGISTRATE JUD GES REPORT AND RECOMMEN DATION IS NOT CORRECT WILL NOT DEFEAT A PROPE RLY DOCUMENTED MOTION FOR SUMMARY JUDGMENT IT IS THEREFORE ORDERED THAT THE DEFENDANTS MOT ION FOR SUMMARY JUDGMEN T BE GRANTED, IT IS SO ORDERED.

NO. 91-1220

HENRY M. HERLONG JR.
UNITED STATES DISTRICT
JUDGE
GREENVILLE, SOUTH
CAROLINA
SEPTEMBER 24, 1991.

NO. 91-1220

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA GREENVILLE DIVISION

ROGER SIMMONS PLAINTIFF V. GENERAL ELECTRIC COMPANY AND METROPOLITAN LIFE INSURANCE COMPANY DEFENDANTS	CIVIL ACTION NO. 6:90-1192-17K ORDER
ROGER SIMMONS PLAINTIFF V. GENERAL ELECTRIC COMPANY METROPOLITAN LIFE INSURANCE COMPANY AND ELECTRIC MUTUAL INSURANCE DEFENDANTS	CIVIL ACTION NO.6:90-1234 -17K ORDER

NO.91-1220
THE UNITED STATES
MAGISTRATE TO WHOM
THESE TWO ACTIONS
WERE REFERRED HAS
ORDERED THAT THEY BE
CONSOLIDATED PURSUANT
TO FED. R. CIV.P. 42(A)
PLAINTIFF ROGER
SIMMONS OPPOSES THE
ORDER OF CONSOLIDATION
AFTER CAREFULLY REVIEW
ING THE MATERIALS
SUBMITTED BY THE
PLAINTIFF THE COURT
HAS CONCLUDED THAT THE
MAGISTRATE WAS CORRECT
AND THAT CONSOLIDATION
WILL TEND TO AVOID
UNNECESSARY COSTS OR
DELAYS IN THESE TWO
ACTIONS.

NO.91-1220
FILED AUG.27,1990
ANN A. BIRCH, CLERK
ACCORDINGLY, THE
MAGISTRATES ORDER OF
JULY 19,1990, IS
HEREBY AFFIRMED AND
THESE ACTIONS SHALL
HEREAFTER BE
CONSOLIDATED FOR
PURPOSES OF DISCOVERY
AND TRIAL.
IT IS SO ORDERED.

_____

JOSEPH F. ANDERSON JR.
UNITED STATES
DISTRICT JUDGE
COLUMBIA, SOUTH
CAROLINA
AUGUST 27,1990

Supreme Court, U.S.
F I L E D
JUL 10 1992
OFFICE OF THE CLERK

No. 91-2005

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

ROGER LEE SIMMONS,

Petitioner,

v.

GENERAL ELECTRIC COMPANY,
METROPOLITAN LIFE INSURANCE COMPANY, and
ELECTRIC MUTUAL LIABILITY INSURANCE COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

RESPONDENT GENERAL ELECTRIC COMPANY'S BRIEF IN OPPOSITION

J. HAMILTON STEWART, III *
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* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 91-2005

ROGER LEE SIMMONS,

Petitioner,

v.

GENERAL ELECTRIC COMPANY,
METROPOLITAN LIFE INSURANCE COMPANY, and
ELECTRIC MUTUAL LIABILITY INSURANCE COMPANY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

RESPONDENT GENERAL ELECTRIC COMPANY'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE [1]

The petitioner, Roger Lee Simmons ("Simmons"), is a former employee of respondent General Electric Company ("GE")[2]. Simmons was employed at GE's gas tur-

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[1] The petitioner's statement of the case omits some basic facts which are material to the decisions rendered below and to this Court's consideration of whether certiorari should be granted. Therefore, in accordance with Supreme Court Rules 15.1 and 24.2, respondent takes this opportunity to present the court with a more accurate and informative statement of the case. The petitioner's rendition of the procedural history of this case is also insufficient and must be corrected.

[2] In accordance with Supreme Court rule 29.1, respondent GE declares that it has a number of subsidiaries in the United States and elsewhere. However, only a limited number of these subsidiaries

bine plant in Greenville, South Carolina from approximately March 13, 1978 until May 8, 1987. On October 31, 1987, Simmons initiated a claim against GE and Electric Mutual Liability Insurance Company ("Electric Mutual") under the South Carolina workers' compensation statutes.[3] Simmons alleged he had sustained an occupational disease or accidental injury to his respiratory system during the course and scope of his employment. Following several hearings and appeals involving this claim, workers' compensation benefits were awarded by the South Carolina Workers' Compensation Commission and affirmed by the state court. These benefits have been paid in full.

Simmons filed the present federal court actions on June 1 and 4, 1990[4] before a final disposition of his workers' compensation claims. His present claims are allegedly based upon the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* Although inartfully drafted, Simmons' claims appear to allege he is due additional benefits under GE's employee benefit package, specifically including: (1) employee and dependent medical and dental insurance; (2) personal accident insur-

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have any outstanding equity or debt securities which are publicly held. These are: GECC Financial Corporation; General Electric Capital Corporation (formerly General Electric Credit Corporation); General Electric Capital Canada, Inc.; General Electric Credit International, N.V.; General Electric Financial Services, Inc.; Montgomery Ward Credit Corporation; Montgomery Ward & Co., Incorporated (50% GE owned); and CAMCO, Inc. (Canada) (51% GE owned).

[3] Electric Mutual is primarily responsible for all workers' compensation actions brought by GE employees or former employees against GE.

[4] These two separate Complaints were consolidated by the United States District Court for the District of South Carolina, Greenville Division.

ance; (3) weekly sickness and accident insurance; (4) long-term disability insurance; (5) dependent life insurance; (6) several savings and stock ownership options; and (7) pension benefits.[5] GE and The Metropolitan Life Insurance Company[6] ("Metropolitan") reviewed the actual language of these respective plans and determined the benefits due under each. *See Dameron v. Sinai Hosp. of Baltimore, Inc.*, 815 F.2d 975, 978 (4th Cir. 1987) (actual language of respective plans determines eligibility for benefits and if benefits are due, in what amount). As these amounts had either been paid or were being paid, the respondents moved for summary judgment on all claims.[7]

On September 25, 1991, after more than fifteen months of tedious litigation, United States District Court Judge Henry M. Herlong, Jr. accepted the recommendation of United States Magistrate Judge William M. Catoe, Jr. and granted summary judgment on all counts for respondents GE, Metropolitan and Electric Mutual. Simmons moved for a new trial or amended judgment under Federal Rules of Civil Procedure 59, 60, 61, and 62 on October 2, 1991. On October 4, 1991, Simmons filed a Notice of Appeal to the Fourth Circuit Court of Appeals. This Notice of Appeal was dismissed by the Fourth Circuit on December 27, 1991 as untimely under Federal Rule of Appellate Procedure 4(a)(4). Simmons' subsequent motion to extend the time for appeal was denied by the District Court on January 10, 1992. No appeal was taken from that District Court Order. Simmons now pe-

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[5] Simmons also alleged the actions of the respondents constituted a pattern of illegal activity under RICO. Both the magistrate and the district court found these allegations to be unfounded.

[6] Metropolitan is the insurance carrier for several of GE's employee benefit plans.

[7] Since February, 1991, Metropolitan has tendered a monthly check for $200.99 in long-term disability benefits. Simmons has refused to accept these payments and has returned each payment to counsel for Metropolitan.

titions this Court for review of the Fourth Circuit's ruling dismissing his appeal as untimely, as well as a ruling on the substantive merits of his action.

SUMMARY OF THE ARGUMENT

Simmons' petition for certiorari submits issues not properly before this Court. Simmons' appeal to the Fourth Circuit Court of Appeals from the September 25, 1991 District Court Order was dismissed by the Fourth Circuit as untimely. GE contends this petition is now an attempt to seek certiorari directly from a district court decision.

In addition, the questions presented by Simmons do not fit within the Supreme Court's criteria for granting a writ of certiorari. The questions presented concern only the parties directly involved and are not of sufficient gravity or importance to the general public to warrant review by this Court. In particular, the reasons asserted for review expressly present a matter of contractual interpretation which would require the Court to review and weigh the evidence and to discuss specific facts before ruling upon the correctness of the decisions below. Further, the reasons asserted for review are based upon an alleged conflict in the decisions of circuit courts which does not, in fact, exist. Simmons' grounds for review amount to nothing more than a complaint that the courts below did not agree with petitioner's interpretation of the applicable plan documents and did not grant him the relief requested.

ARGUMENT

I. THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE SIMMONS DID NOT TIMELY APPEAL THE LOWER COURT'S DECISION AND THE PETITION PRESENTS ISSUES NOT PROPERLY BEFORE THIS COURT.

On September 25, 1991, United States District Judge Henry M. Herlong, Jr. granted summary judgment to all respondents. On December 27, 1991, the Fourth Circuit dismissed Simmons' appeal as untimely. Simmons' subsequent motion to extend the time for appeal was denied by the District Court on January 10, 1992. No appeal was taken from this Order of the District Court. Instead, Simmons filed his petition for writ of certiorari with the United States Supreme Court.

Although characterized as a petition for a writ of certiorari from the Fourth Circuit decision, Simmons seeks direct Supreme Court review of the merits of his claims and in particular, of the decision of the district court. Such an appeal to the Supreme Court is improper without first exhausting the lower court appellate process. *See* Sup. Ct. R. 13 and 28 U.S.C. § 2101. The United States Supreme Court normally will not consider issues which have not been presented to the Court of Appeals. *See, e.g., Wood v. Strickland*, 420 U.S. 308 (1975); *Neely v. Martin K. Eby Constr. Co.*, 386 U.S. 317 (1967 (applying former Supreme Court Rule 40).

II. THE PETITIONER'S ASSERTED REASONS FOR GRANTING CERTIORARI DO NOT FIT WITHIN THE WELL-ESTABLISHED CRITERIA ESSENTIAL FOR REVIEW.

Simmons has asserted a number of reasons for granting certiorari. None of these reasons are compelling. The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was conferred upon the United States Supreme Court for two purposes: (1) to secure

uniformity of decisions among certain courts; and (2) to bring up questions of importance when it is in the public interest to have these issues decided by the court of last resort. *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 518, 530-31 (1957); *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923).

Supreme Court Rule 10 embodies the purposes set forth above by emphasizing the discretionary nature of review on a writ of certiorari. It also indicates the types or "character" of reasons that will be considered by the Court for review. The rule itself expressly declares that the reasons enumerated therein are not all-inclusive. However, for a case to be reviewed, the reasons asserted must either fall within Rule 10 or otherwise present matters of exceptional gravity or importance to the general public. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916) (jurisdiction to review judgments of courts of appeals by certiorari is to be exercised sparingly, and only in cases of peculiar gravity and general importance, or to secure uniformity of decision); *In re Woods*, 143 U.S. 202 (1892). The reasons asserted for review in this case do not satisfy the above-stated criteria.

A. The Reasons Asserted By Petitioner Present A Fact-Specific Question Of Contractual Interpretation Which Is Important Only To The Parties Directly Involved.

The reasons asserted for review by Simmons present a question of contractual interpretation which concerns only the parties directly involved in this dispute. Only Simmons, GE, Metropolitan, and Electric Mutual have any significant stake in this controversy. Simmons claims that the district court's interpretation of the contract was incorrect, while GE agrees with the court's interpretation. If this Court were to review that interpretation, the conclusion—whether an affirmance or a reversal—would still impact only the relatively few people who could as-

sert similar claims under that particular contract. That is not a sufficient ground for review.

Certiorari will not be granted to review a judgment of a court of appeals where the case, however important it may be to the petitioner, does not involve a question of gravity or general importance, or present a conflict between decisions of certain courts. *Fields v. United States*, 205 U.S. 292 (1907); *see also Rudolph v. United States*, 370 U.S. 269, 270 (1962) (writ of certiorari was dismissed as improperly granted for a case involving merely a review of findings of fact which would be of no importance except to the litigants themselves), *rehearing denied*, 371 U.S. 854 (1962). Certiorari generally will be denied where the grounds asserted for review require the Court to review and weigh evidence and to discuss specific facts in order to rule on the correctness of the decision below. *United States v. Johnston*, 268 U.S. 220, 227 (1925); *see also National Collegiate Athletic Ass'n v. Board of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984) (great weight is given to fact-finding by a district court approved by a court of appeals); *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 226 n.2 (1975) (issue whether FTC consent order had been violated did not merit Supreme Court's grant of petition for certiorari to review a court of appeals' judgment, where such issue concerned only a particular order as applied to a discrete set of facts).

This is exactly what Simmons has asked the Court to do in this instance. Simmons was unable to get a federal court to agree with his interpretation of GE's plan documents. Now, Simmons asks this Court to review the facts, weigh the evidence, and interpret the contract in a manner consistent with his own interests. Such a self-serving endeavor is obviously of no importance to the general public. In addition, since the question presented is one of interpretation of a very specific provision of a contract, the question is not likely to recur or present a conflict among circuit courts in the future.

B. The District Court's And Fourth Circuit's Judgment Is Consistent With The Judgments Of Other Circuit Courts And Thus, There Is No Conflict As Asserted By Simmons.

Both the magistrate and the district court relied on the actual terms of the particular benefit plans and summary plan descripions in determining the benefits due Simmons. Simmons has apparently alleged the other circuit courts are in conflict on this issue. However, the circuit courts have been uniform in relying on the applicable plan provisions in determining a claimants' eligibility and accrual of benefits. *See, e.g., Pratt v. Petroleum Production Management, Inc. Employee Sav. Plan & Trust*, 920 F.2d 651 (10th Cir. 1990); *Dameron v. Sinai Hosp. of Baltimore, Inc.*, 815 F.2d 975 (4th Cir. 1987); *In re White Farm Equipment Co.*, 788 F.2d 1186 (6th Cir. 1986); *Delgrosso v. Sprang and Co.*, 769 F.2d 928 (3rd Cir. 1985). Simmons has not shown any circuit court which has deviated from this practice.

CONCLUSION

For the reasons stated above, respondent GE respectfully requests that Simmons' Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit be denied.

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FILED
JUL 10 1992
OFFICE OF THE CLERK

No. 91-2005

IN THE

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OCTOBER TERM, 1992

ROGER LEE SIMMONS,
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ELECTRIC MUTUAL INSURANCE COMPANY,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENT ELECTRIC MUTUAL INSURANCE COMPANY'S BRIEF IN OPPOSITION

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IN THE

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

RESPONDENT ELECTRIC MUTUAL INSURANCE COMPANY'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The petitioner, Roger Lee Simmons ("Simmons"), is a former employee of respondent, General Electric Company ("General Electric"). Simmons was employed at General Electric's gas turbine plant in Greenville, South Carolina, from approximately March 13, 1978 until May 8, 1987. On October 31, 1987, Simmons initiated a South Carolina workers' compensation claim against General Electric and Electric Mutual Liability Insurance Company ("Electric Mutual")[1], the workers' compensation

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[1] Pursuant to Sup. Ct. R. 29.1, respondent Electric Mutual declares that it has no parent company or non-wholly-owned subsidiary.

carrier for General Electric. Simmons claimed that he had sustained an occupational disease or accidental injury to his respiratory system during the course and scope of his employment. Following several hearings and appeals involving Simmons' workers' compensation claim, workers' compensation benefits, as awarded by the South Carolina Workers' Compensation Commission and affirmed by the state court, were paid in full by respondents General Electric and Electric Mutual.[2]

Simmons filed the present federal court actions on June 1, 1990 and June 4, 1990 [3] while the workers' compensation claim was proceeding before the South Carolina Workers' Compensation Commission. Simmons' present claims are allegedly based upon the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* Although the Complaints and the Petition for Certiorari are inartfully drafted, Simmons' present action appears to allege that he is due additional benefits under either General Electric's or Metropolitan Life Insurance Company's employee benefit programs, or both.

United States Magistrate Judge William M. Catoe, Jr. and United States District Court Judge Henry M. Herlong, Jr. reviewed the case, the language of the respective plans of General Electric and Metropolitan Life Insur-

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[2] The hearing commissioner with the South Carolina Workers' Compensation Commission denied the petitioner's claim on July 11, 1988 based upon claimant's failure to prove a proper claim for occupational disease or injury by accident. This was reversed by an appellate panel of the Workers' Compensation Commission. The Order was subsequently appealed to the State Court of Common Pleas in Greenville County, which upheld the decision of the Full Commission. A subsequent appeal to the South Carolina Supreme Court was withdrawn prior to a hearing and decision.

[3] The Complaints were later consolidated by the United States District Court.

ance Company ("Metropolitan")[4], and determined the nature and amount of benefits due under the employee benefit programs. Magistrate Judge Catoe and Judge Herlong found Simmons' RICO allegations against General Electric, Metropolitan, and Electric Mutual to be unfounded and additionally held that the "exclusive remedy" provisions of the South Carolina Workers' Compensation Act bar further claims by Simmons against Electric Mutual. Thus, on September 25, 1991, Judge Herlong accepted the recommendation of Magistrate Judge Catoe and granted summary judgment on all counts for respondents General Electric, Metropolitan, and Electric Mutual.

On October 4, 1991, Simmons filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit. This Notice of Appeal was dismissed by the Fourth Circuit on December 27, 1991 as untimely under Fed. R. App. P. 4(a)(4). Simmons' subsequent motion to extend the time for appeal was denied by the United States District Court for the District of South Carolina on January 10, 1992. No appeal was taken from the District Court Order. Instead, Simmons has directly petitioned this Court for review of the Fourth Circuit's ruling dismissing his appeal as untimely, as well as a ruling on the substantive merits of his action. Apparently, Simmons claims that he is due additional benefits beyond those computed by the South Carolina Workers' Compensation Commission, Magistrate Judge Catoe, and District Court Judge Herlong. Electric Mutual contends, and the Magistrate and District Court have agreed, that Simmons is barred from asserting claims against Electric Mutual under the South Carolina Workers' Compensation Act and, in any event, petitioner has received all the benefits to which he is legally entitled.

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[4] Metropolitan is the insurance carrier for several of General Electric's employee benefit plans.

SUMMARY OF ARGUMENT

As an initial premise, Electric Mutual contends that this Court should not grant certiorari because Simmons presents issues not properly before this Court. Simmons' appeal from the September 25, 1991 District Court Order to the Fourth Circuit Court of Appeals was dismissed by the Fourth Circuit as untimely. The district court denied Simmons' subsequent motion for extension of time to file an appeal, and Simmons did not appeal this decision to the Fourth Circuit. Instead, Simmons filed his petition for certiorari directly with this Court. Electric Mutual contends that this is an attempt to petition for certiorari directly from a district court decision, which is improper under Sup. Ct. R. 13 and 28 U.S.C. § 2101.

In addition, the questions presented by Simmons do not satisfy the Supreme Court's criteria for granting a writ of certiorari as set forth in Sup. Ct. R. 10. The questions presented concern only the parties directly involved and are not of sufficient gravity and importance to the general public to warrant review by this Court. The reasons asserted by Simmons for review would require the Court to review and weigh the evidence and to discuss specific facts before ruling upon the correctness of the decisions below. The reasons asserted for review are based upon an alleged conflict in decisions of the circuit courts which does not, in fact, exist. Simmons' grounds for review amount to nothing more than a complaint that the courts below did not agree with his interpretation of the applicable employee plan documents and did not grant him the relief which he requested.

REASONS FOR DENYING THE WRIT

I. THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE SIMMONS DID NOT TIMELY APPEAL THE LOWER COURT DECISIONS AND THE PETITION PRESENTS ISSUES NOT PROPERLY BEFORE THIS COURT.

On September 25, 1991, United States District Judge Henry M. Herlong, Jr. granted summary judgment to all respondents. On December 27, 1991, the Fourth Circuit dismissed Simmons' appeal as untimely under Fed. R. App. P. 4(a)(4). Petitioner's subsequent motion to extend the time for appeal was denied by the district court on January 10, 1992. No appeal was taken from this Order of the district court and, instead, petitioner filed his petition for writ of certiorari with the United States Supreme Court.

Although styled as a petition for writ of certiorari from the Fourth Circuit decision, the petitioner seeks direct Supreme Court review of the merits of his claims and, in particular of the decision of the district court. Such an appeal to the Supreme Court without first exhausting the lower court appellate process is improper. *See* Sup. Ct. R. 13; 28 U.S.C. § 2101. The United States Supreme Court normally will not consider issues which have not been presented to the court of appeals. *See, e.g., Wood v. Strickland*, 420 U.S. 308 (1975); *Neely v. Martin K. Eby Const. Co.*, 386 U.S. 317 (1967) (applying former Supreme Court Rule 40).

II. SIMMONS' ASSERTED REASONS FOR GRANTING CERTIORARI DO NOT FIT WITHIN THE WELL-ESTABLISHED CRITERIA ESSENTIAL FOR REVIEW.

Simmons has asserted two purported bases for granting certiorari, neither of which is compelling. Jurisdiction to bring up cases by certiorari from the courts of appeals was conferred upon the Supreme Court for two purposes:

(1) to secure uniformity of decisions among certain courts; and (2) to bring up questions of importance when it is in the public interest to have these issues decided by the court of last resort. *Rogers v. Missouri Pacific R.R. Co.*, 352 U.S. 518, 530-31 (1957); *Magnum Import Co. v. Coty*, 262 U.S. 159, 169 (1923).

Supreme Court Rule 10 sets forth the "character" of reasons that will be considered by the Court for review. For a case to be reviewed, the reasons asserted must either fall within Rule 10 or otherwise present matters of exceptional gravity or importance to the general public. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251 (1916) (jurisdition to review judgments of courts of appeals by certiorari is to be exercised sparingly, and only in cases of peculiar gravity and general importance, or to secure uniformity of decision); *In re Woods*, 143 U.S. 202 (1892). The reasons asserted for review in this case do not satisfy the above-stated criteria.

A. The Reasons Asserted by Simmons Present a Fact-Specific Question of Contractual Interpretation Which is Important to Only the Parties Directly Involved.

The reasons asserted for review by Simmons present a question which concerns only the parties directly involved in this dispute. Only the petitioner, General Electric, Metropolitan, and Electric Mutual have any significant stake in this controversy. Simmons claims that the district court's interpretation of the employee benefit plan was incorrect, while respondents agree with the court's interpretation.[5] If this Court were to review that interpretation, the conclusion—whether an affirmance or a reversal—would still impact only the relatively few people

[5] It should be reiterated, however, that Electric Mutual is merely the workers' compensation carrier for Simmons' employer, General Electric, and has no contact or association with the employee benefit programs.

who could assert similar claims under that particular plan. That is not a sufficient ground for review.

Certiorari will not be granted to review a judgment of a court of appeals where the case, however important it may be to the petitioner, does not involve a question of gravity or general importance, or present a conflict between decisions of certain courts. *Fields v. United States*, 205 U.S. 292 (1907); *see also Rudolph v. United States*, 370 U.S. 269, 270 (1962) (writ of certiorari was dismissed as improperly granted for a case involving merely a review of findings of fact which would be of no importance except to the litigants themselves), *reh'g denied*, 371 U.S. 854 (1962). Certiorari generally will be denied where the grounds asserted for review require the Court to review and weigh evidence and to discuss specific facts in order to rule on the correctness of the decision below. *Texas v. Mead*, 465 U.S. 1041, 1043 (1984); *United States v. Johnston*, 268 U.S. 220, 227 (1925); *see also National Collegiate Athletic Ass'n v. Board of Regents of Univ. of Oklahoma*, 468 U.S. 85 (1984) (great weight is given to fact-finding by a district court approved by a court of appeals); *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 226 n. 2 (1975) (issue of whether FTC consent order had been violated did not merit Supreme Court's grant of petition for certiorari to review a court of appeals' judgment, where such issue concerned only a particular order as applied to a discrete set of facts).

This is exactly what Simmons has asked the Court to do in this instance. Simmons was unable to get the federal court to agree with his interpretation of General Electric's plan documents. He is simply asking this Court to again review the facts, weigh the evidence, and interpret the plan in a manner consistent with his own interest. Such a self-serving endeavor is obviously of no importance to the general public. In addition, since the question presented is one of interpretation of a very specific provision of the plan, the question is not likely

to recur or present a conflict among circuit courts in the future. Thus, Simmons has not presented any special or important reason for granting the Petition as to any of the Respondents.

In addition to the above, the district court held that Simmons cannot maintain a civil action against Electric Mutual because Electric Mutual is merely the workers' compensation carrier for Simmons' employer, General Electric. More specifically, the district court held that the action was barred by the exclusive remedy provisions of the South Carolina Workers' Compensation Act. *See* S.C. Code Ann. § 42-1-540 (Law. Co-Op. 1976). It is well-settled that when a worker is injured on the job and his injury is covered by a state Workers' Compensation Law, which provides that it is the exclusive remedy, as does South Carolina's, the worker is bound by that provision. In so ruling, the court correctly considered South Carolina statutory and case law. *See Cook v. Mack's Transfer & Storage*, 352 S.E.2d 296 (S.C. Ct. App. 1986), *cert. den.*, 355 S.E.2d 861 (S.C. 1987); *Doe v. South Carolina State Hosp.*, 328 S.E.2d 652 (S.C. Ct. App. 1985). The decision of the district court as to Electric Mutual is based upon the clear language of a state statutory provision and well-settled case law interpreting that provision. This is a question of state, not federal, law and there is no assertion, nor could there be, that this decision conflicts with other circuit court decisions. Accordingly, Simmons has not demonstrated any Rule 10 consideration or other special or important reason for granting the Petition as against Electric Mutual.

B. The District Court's and Fourth Circuit's Judgment is Consistent with the Judgments of Other Circuit Courts and thus, there is no Conflict as Asserted by Simmons.

Both the magistrate and the district court relied on the actual terms of the particular benefit plans and summary plan descriptions in determining the benefits due Simmons. Simmons has apparently alleged that other

circuit courts are in conflict on this issue. However, the circuit courts have been uniform in relying on the actual plan provisions in determining a claimant's eligibility and accrual of benefits. *See e.g., Pratt v. Petroleum Prod. Management, Inc. Employee Sav. Plan & Trust*, 920 F.2d 651 (10th Cir. 1990); *Dameron v. Sinai Hosp. of Baltimore, Inc.*, 815 F.2d 975 (4th Cir. 1987); *In re White Farm Equip. Co.*, 788 F.2d 1186 (6th Cir. 1986); *Delgrosso v. Spang and Co.*, 769 F.2d 928 (3rd Cir. 1985). Simmons has not shown any circuit court which has deviated from this practice.

As noted above, Simmons has not attempted to set forth any conflict in the circuits concerning the propriety of dismissing a claim against an employee's employer under the applicable state workers' compensation law exclusive remedy provisions.

CONCLUSION

For the reasons stated above, respondent Electric Mutual respectfully requests that Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit be denied.

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July 10, 1992